

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Christopher W.
Blackburn et al.

Examiner: Omkar A. Deodhar

Serial No.: 10/789,957

Group Art Unit: 3714

Filed: February 26, 2004

Docket: 1842.023US1

For: PROGRESSIVE SERVICE IN A SERVICE-ORIENTED GAMING NETWORK
ENVIRONMENT

APPEAL BRIEF UNDER 37 CFR § 41.37

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Commissioner for Patents
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Sir:

The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on March 12, 2009, from the Final Rejection of claims 1-46 of the above-identified application, as set forth in the Final Office Action mailed on November 12, 2008.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of \$540.00 which represents the requisite fee set forth in 37 C.F.R. § 41.20(b)(2). The Appellants respectfully request consideration and reversal of the Examiner's rejections of pending claims.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, WMS GAMING INC..

2. RELATED APPEALS AND INTERFERENCES

<u>App. Serial #</u>	<u>Attorney Docket</u>	<u>Title</u>
10/813,653	1842.017US1	EVENT MANAGEMENT SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
11/068,065	1842.018US2	GAMING NETWORK ENVIRONMENT HAVING A LANGUAGE TRANSLATION SERVICE
10/562,411	1842.019US1	GAMING NETWORK ENVIRONMENT PROVIDING A CASHLESS GAMING SERVICE
10/788,661	1842.021US1	GAMING MANAGEMENT SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/788,902	1842.022US1	GAME UPDATE SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/794,723	1842.024US1	DISCOVERY SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/794,422	1842.025US1	BOOT SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/796,553	1842.026US1	AUTHENTICATION SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/796,562	1842.027US1	AUTHORIZATION SERVICE IN A SERVICE-ORIENTED GAMING NETWORK
10/802,701	1842.029US1	TIME SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/802,699	1842.030US1	ACCOUNTING SERVICE IN A SERVICE ORIENTED GAMING NETWORK ENVIRONMENT
10/802,537	1842.031US1	MESSAGE DIRECTOR SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT

3. STATUS OF THE CLAIMS

The present application was filed on February 26, 2004 with claims 1-46. A non-final Office Action mailed May 16, 2007 rejected claims 1-46. A Final Office Action (hereinafter “the Final Office Action”) was mailed November 12, 2008, which rejected claims 1-46. Claims 1-46 stand twice rejected, remain pending, and are the subject of the present Appeal.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the Final Office Action dated November 12, 2008.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Some aspects of the present inventive subject matter include, but are not limited to, systems and methods that provide a progressive service in a service-oriented gaming network environment. In general, the independent claims recite systems and methods that provide a three party handshake for providing a progressive service on a wagering game network. The progressive service first sends service information to a discovery agent, the discovery agent authorizes and authenticates the progressive service and in response publishes the service information, and a client such as a wagering game machine desiring to use the progressive service obtains the service information from the discovery agent and uses the service information to contact and utilize the progressive service.

This summary is presented in compliance with the requirements of Title 37 C.F.R. § 41.37(c)(1)(v), mandating a “concise explanation of the subject matter defined in each of the independent claims involved in the appeal . . .” Nothing contained in this summary is intended to change the specific language of the claims described, nor is the language of this summary to be construed so as to limit the scope of the claims in any way.

INDEPENDENT CLAIM 1

1. A method for providing a progressive service to gaming machines in a gaming network, the method comprising:

sending service information for the progressive service from the progressive service to a discovery agent on the gaming network, wherein the progressive service provides information regarding a progressive wagering game to a plurality of gaming machines participating in the progressive wagering game, and wherein in response to a wager at one of the plurality of gaming machines the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game; [see e.g., FIGs. 1-2, element 10; FIG. 3, elements 304, 306, 314, 322 and 324; FIG. 5B, elements 501, 502, 503 and 521; page 5, line 12 to page 6, line 18; page 7, lines 11-17; page 11, line 21 to page 12, line 4; page 17, line 23 to page 18, line 10; and page 21, lines 13-14]

determining by the discovery agent if the progressive service is authentic and authorized; *[see e.g., FIG. 5B, elements 502, 503, 504, 522 and 523; page 7, line 27 to page 8, line 3; page 15, lines 21-23; and page 21, lines 15-19]*

in response to determining that the progressive service is authentic and authorized, publishing the service information to a service repository to make the progressive service available on the gaming network; *[see e.g., FIG. 3, elements 306, 324 and 326; FIG. 5B, element 524; page 11, line 21 to page 12, line 4; page 14, line 10 to page 15, line 23; and page 21, lines 20-22]*

receiving by the discovery agent a request for the location of the progressive service from the gaming machine; *[see e.g., FIG. 3, elements 302, 306, 312, 324, 326 and 332; FIG. 5B, element 525; page 11, line 18 to page 12, line 4; and page 21, lines 23-25]*

using the service information to register the gaming machine with the progressive service; *[see e.g., FIG. 3, elements 302, 304, 312, 324, 326 and 334; FIG. 5B, elements 526, 527, 528 and 529; page 11, line 18 to page 12, line 4; page 17, lines 1-7; and page 21, line 26 to page 22, line 6]*

verifying that the gaming machine is authorized to utilize the progressive service; and *[see e.g., FIG. 2, element 232; FIG. 5B, elements 530-532; page 6, line 25 to page 7, line 2; page 22, lines 7-12]*

processing one or more service requests between the gaming machine and the progressive service, said service requests conforming to an internetworking protocol. *[see e.g., FIG. 3, elements 302, 304, 312, 314 and 334; FIG. 4, element 400; FIG. 5B, elements 533-538; page 12, line 13 to page 14, line 6; page 17, lines 1-7; and page 22, lines 13-26]*

INDEPENDENT CLAIM 13

13. A method for participating in a progressive game on a gaming machine via a progressive service in a gaming network, the method comprising:

issuing a request from the gaming machine to a discovery agent to discover a service description for the progressive service, wherein the discovery agent receives the service description from the progressive service and authenticates and authorizes the progressive service, and wherein in response to a wager the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game; *[see e.g., FIGs. 1-2, element 10; FIG. 3, elements 304, 306, 314, 322 and 324; FIG. 5B, elements 501, 502, 503, 504 and 521-524; page 5, line 12 to page 6, line 18; page 7, line 11 to page 8, line 3; page 11, line 21 to page 12, line 4; page 15, lines 21-23; page 17, line 23 to page 18, line 10; and page 21, lines 13-22]*

receiving the service description from the discovery agent; *[see e.g., FIG. 3, elements 302, 304, 312, 324, 326 and 334; FIG. 5B, elements 526, 527, 528 and 529; page 11, line 18 to page 12, line 4; page 17, lines 1-7; and page 21, line 26 to page 22, line 6]*

using the service description to register with the progressive service, wherein the progressive service verifies that the gaming machine is authorized to utilize the progressive service; and *[see e.g., FIG. 2, element 232; FIG. 3, elements 302, 304, 312, 324, 326 and 334; FIG. 5B, elements 526-532; page 6, line 25 to page 7, line 2; page 11, line 18 to page 12, line 4; page 17, lines 1-7; and page 21, line 26 to page 22, line 12]*

processing one or more service requests between the gaming machine and the progressive service. *[see e.g., FIG. 3, elements 302, 304, 312, 314 and 334; FIG. 5B, elements 533-538; page 17, lines 1-7; and page 22, lines 13-26]*

INDEPENDENT CLAIM 20

20. A gaming network system providing a progressive service, the gaming network system comprising:

a progressive service communicably coupled to a gaming network, wherein the progressive service provides information regarding a progressive wagering game to a plurality of gaming machines participating in the progressive wagering game; and *[see e.g., FIGs. 1-2, element 10; FIG. 3, element 304; FIG. 5B, elements 501 and 502; page 5, line 12 to page 6, line 18; page 7, lines 11-17; and page 17, line 23 to page 18, line 10]*

a discovery agent communicably coupled to the gaming network, wherein the discovery agent is operable to: *[see e.g., FIG. 3, element 306; FIG. 5B, element 503 and page 11, line 21 to page 12, line 4]*

receive service information from the progressive service, *[see e.g., FIG. 3, elements 304, 306, 314, 322 and 324; FIG. 5B, element 521; page 11, line 21 to page 12, line 4; and page 21, lines 15-19]*

determine if the progressive service is authentic and authorized, and *[see e.g., FIG. 5B, elements 502, 503, 504, 522 and 523; page 7, line 27 to page 8, line 3; page 15, lines 21-23; and page 21, lines 15-19]*

publish the service information to a service repository to make the progressive service available on the gaming network; *[see e.g., FIG. 3, elements 306, 324 and 326; FIG. 5B, element 524; page 11, line 21 to page 12, line 4; page 14, line 10 to page 15, line 23; and page 21, lines 20-22]*

wherein at least one gaming machine of the plurality of gaming machines communicably coupled to the gaming network is operable to:

issue a request for the location of the progressive service to the discovery agent and use the service information received from the discovery agent to issue a registration request to the progressive service; and *[see e.g., FIG. 3, elements 302, 304, 312, 324, 326 and 334; FIG. 5B, elements 525, 526, 527, and 528; page 11, line 18 to page 12, line 4; page 17, lines 1-7; and page 22, line 23 to page 22, line 4]*

wherein the progressive service is operable to:

receive registration requests from the at least one gaming machine, *[see e.g., FIG. 3, elements 302, 304, 312, 324, 326 and 334; FIG. 5B, element 529; page 11, line 18 to page 12, line 4; page 17, lines 1-7; and page 22, lines 5-6]*

verify that the gaming machine is authorized to utilize the progressive service, and *[see e.g., FIG. 2, element 232; FIG. 5B, elements 530-532; page 6, line 25 to page 7, line 2; page 22, lines 7-12]*

process service requests between the gaming machine and the progressive service. *[see e.g., FIG. 3, elements 302, 304, 312, 314 and 334; FIG. 5B, elements 533-538; page 17, lines 1-7; and page 22, lines 13-26]*

INDEPENDENT CLAIM 28

28. A computer-readable medium having computer executable instructions for performing a method for providing a progressive service to gaming machines in a gaming network, the method comprising:

sending service information for the progressive service from the progressive service to a discovery agent on the gaming network, wherein the progressive service provides information regarding a progressive wagering game to a plurality of gaming machines participating in the progressive wagering game, and wherein in response to a wager at one of the plurality of gaming machines the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game; *[see e.g., FIGs. 1-2, element 10; FIG. 3, elements 304, 306, 314, 322 and 324; FIG. 5B, elements 501, 502, 503 and 521; page 5, line 12 to page 6, line 18; page 7, lines 11-17; page 11, line 21 to page 12, line 4; page 17, line 23 to page 18, line 10; and page 21, lines 13-14]*

determining by the discovery agent if the progressive service is authentic and authorized; *[see e.g., FIG. 5B, elements 502, 503, 504, 522 and 523; page 7, line 27 to page 8, line 3; page 15, lines 21-23; and page 21, lines 15-19]*

in response to determining that the progressive service is authentic and authorized, publishing the service information to a service repository to make the progressive service available on the gaming network; *[see e.g., FIG. 3, elements 306, 324 and 326; FIG. 5B, element*

524; page 11, line 21 to page 12, line 4; page 14, line 10 to page 15, line 23; and page 21, lines 20-22]

receiving by the discovery agent a request for the location of the progressive service from the gaming machine; [see e.g., FIG. 3, elements 302, 306, 312, 324, 326 and 332; FIG. 5B, element 525; page 11, line 18 to page 12, line 4; and page 21, lines 23-25]

using the service information to register the gaming machine with the progressive service; and [see e.g., FIG. 3, elements 302, 304, 312, 324, 326 and 334; FIG. 5B, elements 526, 527, 528 and 529; page 11, line 18 to page 12, line 4; page 17, lines 1-7; and page 21, line 26 to page 22, line 6]

processing one or more service requests between the gaming machine and the progressive service. [see e.g., FIG. 3, elements 302, 304, 312, 314 and 334; FIG. 5B, elements 533-538; page 17, lines 1-7; and page 22, lines 13-26]

INDEPENDENT CLAIM 40

40. A computer-readable medium having computer executable instructions for performing a method for participating in a progressive game on a gaming machine via a progressive service in a gaming network, the method comprising:

issuing a request from the gaming machine to a discovery agent to discover a service description for the progressive service, wherein the discovery agent receives the service description from the progressive service and authenticates and authorizes the progressive service, and wherein in response to a wager the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game; [see e.g., FIGs. 1-2, element 10; FIG. 3, elements 304, 306, 314, 322 and 324; FIG. 5B, elements 501, 502, 503, 504 and 521-524; page 5, line 12 to page 6, line 18; page 7, line 11 to page 8, line 3; page 11, line 21 to page 12, line 4; page 15, lines 21-23; page 17, line 23 to page 18, line 10; and page 21, lines 13-22]

receiving the service description from the discovery agent; [see e.g., FIG. 3, elements 302, 304, 312, 324, 326 and 334; FIG. 5B, elements 526, 527, 528 and 529; page 11, line 18 to page 12, line 4; page 17, lines 1-7; and page 21, line 26 to page 22, line 6]

using the service description to register with the progressive service, wherein the progressive service verifies that the gaming machine is authorized to utilize the progressive service; and [see e.g., FIG. 2, element 232; FIG. 3, elements 302, 304, 312, 324, 326 and 334; FIG. 5B, elements 526-532; page 6, line 25 to page 7, line 2; page 11, line 18 to page 12, line 4; page 17, lines 1-7; and page 21, line 26 to page 22, line 12]

processing one or more service requests between the gaming machine and the progressive service. [see e.g., FIG. 3, elements 302, 304, 312, 314 and 334; FIG. 5B, elements 533-538; page 17, lines 1-7; and page 22, lines 13-26]

This summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers to each of the appended claims and its legal equivalents for a complete statement of the invention.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-46 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 10/788,902 and claims 1-26 of copending Application No. 10/788,661.

Claims 1-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gatto et al. (U.S. Patent No. 6,916,247; hereinafter “Gatto”) in view of Tarantino (U.S. Patent No. 6,605,001, hereinafter “Tarantino”).

7. ARGUMENT

A) Discussion of the provisional double patenting rejection of claims 1-46

Claims 1-46 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 10/788,902 and claims 1-26 of copending Application No. 10/788,661. Appellant does not admit that the claims are obvious in view of the cited copending applications. Because the present application and the cited copending applications are still undergoing prosecution, and because the rejection is a provisional rejection, Appellant submits that the double patenting issues are not yet ripe for appeal. However, Appellant will consider filing a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(b)(iv) when all other issues related to the patentability of the claims have been resolved.

B) The Applicable Law under 35 U.S.C. §103

The determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on factual evidence. *See Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1336-37 (Fed.Cir. 2005). The legal conclusion that a claim is obvious within § 103(a) depends on at least four underlying factual issues set forth in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966). The underlying factual issues set forth in *Graham* are as follows: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations.

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir.1988). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested, by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) ; M.P.E.P. § 2143.03. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) ; M.P.E.P. § 2143.03. As part of establishing a *prima facie* case of obviousness, the Examiner's analysis must show that some objective teaching in the prior art or that knowledge

generally available to one of ordinary skill in the art would lead an individual to combine the relevant teaching of the references. *Id.* To facilitate review, this analysis should be made explicit. *KSR Int'l v. Teleflex Inc., et al.*, 127 S.Ct. 1727; 167 L.Ed 2d 705; 82 USPQ2d 1385 (2007) (citing *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)).

The Federal Circuit has stated:

Obviousness is tested by "what the combined teaching of the references would have suggested to those of ordinary skill in the art." *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 878 (CCPA 1981)). But it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." *ACS Hosp. Sys.*, 732 F.2d at 1577, 221 USPQ at 933. And "teachings of references can be combined *only* if there is some suggestion or incentive to do so." *Id.* (emphasis in original).

In re Fine, 837 F.2d 1071; 5 USPQ2d 1596 (Fed. Cir.1988).

The test for obviousness under §103 must take into consideration the invention as a whole; that is, one must consider the particular problem solved by the combination of elements that define the invention. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir.1985). The Examiner must, as one of the inquiries pertinent to any obviousness inquiry under 35 U.S.C. §103, recognize and consider not only the similarities but also the critical differences between the claimed invention and the prior art. *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990), *reh'g denied*, 1990 U.S. App. LEXIS 19971 (Fed. Cir.1990). The fact that a reference teaches away from a claimed invention is highly probative that the reference would not have rendered the claimed invention obvious to one of ordinary skill in the art. *Stranco Inc. v. Atlantes Chemical Systems, Inc.*, 15 USPQ2d 1704, 1713 (Tex. 1990). When the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious. *KSR Int'l v. Teleflex Inc., et al.*, 127 S.Ct. 1727; 167 L.Ed 2d 705; 82 USPQ2d 1385 (2007).

Further, conclusions of obviousness must be based on facts, not generality. *In re Warner*, 379 F.2d 1011, 1017 (C.C.P.A. 1967); *In re Freed*, 425 F.2d 785, 787 (C.C.P.A. 1970). In fact, there must be a rational underpinning grounded in evidence to support the legal conclusion of obviousness. The Federal Circuit has stated that, "rejections on obviousness grounds cannot be

sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006), citing *In re Lee*, 61 USPQ2d 1430 (Fed. Cir.2002); 72 FR 57527-28 (Oct. 10, 2007).

Moreover, "mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole." *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006). This was recently echoed by the U.S. Supreme Court in *KSR Int'l v. Teleflex Inc., et al.*, 127 S.Ct. 1727; 167 L.Ed 2d 705; 82 USPQ2d 1385 (2007) (a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.).

Similarly, in determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983); *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985); MPEP § 2141.02. (emphasis added). The Examiner must also recognize and consider not only the similarities but also the critical differences between the claimed invention and the prior art. *In re Bond*, 910 F.2d 831, 834, 15 U.S.P.Q.2d (BNA) 1566, 1568 (Fed. Cir. 1990), *reh'g denied*, 1990 U.S. App. LEXIS 19971 (Fed. Cir. 1990).

C) Discussion of the rejection of claims 1-46 under 35 U.S.C. § 103 as being obvious over Gatto in view of Tarantino

In view of the differences between Appellant's claims at issue and the cited Gatto and Tarantino references, Appellant respectfully submits the claims are not obvious in view of Gatto and Tarantino. In general, the independent claims recite systems and methods that provide a three party handshake for providing a progressive service on a wagering game network. The progressive service first sends service information to a discovery agent, the discovery agent authorizes and authenticates the progressive service and in response publishes the service

information, and a client such as a wagering game machine desiring to use the progressive service obtains the service information from the discovery agent and uses the service information to contact the progressive service. Appellant respectfully submits that when the claims are considered as a whole, the cited references do not teach or suggest the inventive subject matter presented in the independent claims.

For example, claim 1 recites “sending service information for the progressive service from the progressive service to a discovery agent on the gaming network.” Claims 13, 20, 28 and 40 recite similar language. The Final Office Action states that Gatto, in FIG. 19, at column 13, lines 64-67 and at column 15, lines 49-56 discloses “publication of web services & software that searches for & binds to offered services” and that “the networked gaming machines interact with network services using UDDI technology, for instance.” Appellant notes that while Gatto mentions the use of UDDI, Gatto is silent as to how the information is provided to a UDDI node in order to be published. It is neither inherent nor necessary that a progressive service provide service information to a discovery agent. For example, one way known in the art is for a user to provide service information to a discovery agent using a user interface to provide configuration details or to direct the discovery agent to read configuration from a file. Gatto does not disclose any specific mechanism for a discovery agent to obtain service information, thus Gatto does not teach or suggest “sending service information for the progressive service from the progressive service to a discovery agent on the gaming network” as recited in claim 1 and similarly recited in claims 13, 20, 28 and 40. Appellant has reviewed Tarantino and can find no teaching or suggestion of sending service information for the progressive service from the progressive service to a discovery agent on the gaming network.

A further example of a difference between cited references and the claims at issue is found in independent claim 1, which further recites in part “determining by the discovery agent if the progressive service is authentic and authorized.” Independent claims 13, 20, 28 and 40 recite similar language regarding a discovery agent that determines if a progressive service is authentic and authorized. The Final Office Action asserts that a certificate authority disclosed in Gatto at column 2, lines 59-61, teaches “ensuring that service updates between devices and a central server are authentic and authorized. The cited portion of Gatto states “[t]he gaming system may further include a Certificate Authority and communications from the plurality of specialized

devices to the central server may be authenticated by the Certificate Authority.” Appellant notes that the cited portion is referring to authentication of communications between devices and a server. Notably absent from the cited portion is any mention of authorization of any kind. Further, the cited portion states that communications are authenticated, not services. In order to authenticate communications, the service has to be resident on the network. Appellant’s claimed subject matter has the advantage that it determines whether or not a service is authorized and authentic before the service’s details are ever published and made available on the network. In other words, the claims recite authentication and authorization of the service itself, not communications. Thus column 2, lines 59-61 of Gatto fails to teach or suggest determining by the discovery agent if the progressive service is authentic and authorized.

The Final Office Action further asserts that Gatto, at column 8 lines 61-64 discloses “network communication means for enabling data exchange between the gaming machine and central server.” The cited portion of Gatto discloses that a gaming system “may include payment and identification devices, high-level application software modules, network communication means for enabling the gaming machine to exchange data with external devices (such as the central server(s) 112 and the PVU 500, 600, 700).” Again notably absent is any mention of any authentication or authorization of a service. Further, the identification devices mentioned do not deal with authentication of a service, rather they identify a player (see e.g., Gatto at column 5, line 59 to column 6, line 56). Thus column 8, lines 61-64 of Gatto fails to teach or suggest determining by the discovery agent if the progressive service is authentic and authorized.

The Final Office Action yet further asserts that Gatto, at column 10, lines 58-60 discloses “authorization of network operations.” Even if true, authorization of network operations has nothing to do with a discovery service determining if a progressive service is authentic and authorized for a wagering game network. Gatto, at column 10, lines 55-63 discloses “[t]he authentication engine 834 may include functionality to consult a Certificate Authority (which may be located on a server on the network 102 or on a computer network connected thereto), certify the authenticity of the identification presented, authorize a given operation, ensure data integrity of data exchanged, securely time-stamp the operation (to ensure non-repudiation of the operation) and/or revoke illegal identifications, for example.” The cited section indicates that an authentication engine may be used to authenticate identities (presumably of player identification

means) or to authorize operations. Yet again, there is no disclosure of authentication of a service, and further there is no disclosure of authorization of a service. The items cited above all occur after a service has been instantiated. Thus column 10, lines 58-60 of Gatto fails to teach or suggest determining by the discovery agent if the progressive service is authentic and authorized.

Appellant has reviewed Gatto and can find no teaching or suggestion of determining by a discovery agent if the progressive service is authentic and authorized in any other portion of Gatto. Further, Appellant has reviewed Tarantino and can find no teaching or suggestion of determining by a discovery agent if the progressive service is authentic and authorized.

For all of the reasons above, neither Gatto nor Tarantino, alone or in combination, teaches or suggests determining by a discovery agent if the progressive service is authentic and authorized. Therefore there are differences between claims 1, 13, 20, 28 and 40 and the cited combination. As a result, claims 1, 13, 20, 28 and 40 are not obvious in view of the combination of Gatto and Tarantino. Appellant respectfully requests reversal of the rejection of claims 1, 13, 20, 28 and 40.

Even assuming that the combination of Gatto and Tarantino disclosed the elements of Appellant's claims (which is not admitted), "[a] fact finder should be aware. . . of the distortion caused by hindsight bias and must be cautious of argument reliant upon *ex post* reasoning." *KSR Int'l Co.* at 1397. *See also Graham* at 474. The Examiner cannot use the Appellant's structure as a "template" and simply select elements from the references to reconstruct the claimed invention. *In re Gorman*, 933 F.2d 982, 987, 18 U.S.P.Q.2d (BNA) 1885, 1888 (Fed. Cir. 1991).

As discussed above the combination of Gatto and Tarantino fails to teach or suggest that a discovery service is operable to do the authentication and authorization (with the aid of an authentication and authorization service in some embodiments). Appellant's claims recite a novel and nonobvious arrangement and application of discovery, authentication and authorization, and the use of a progressive service in a gaming network, where the progressive service first sends service information to a discovery agent, the discovery agent authorizes and authenticates the progressive service and in response publishes the service information, and a client such as a wagering game machine desiring to use the progressive service obtains the service information from the discovery agent and uses the service information to contact and utilize the progressive service. Thus even if Gatto and Tarantino disclosed a progressive service

provider and authentication and authorization, the arrangement in Gatto, and Tarantino would be different from that recited in Appellant's claims 1, 13, 20, 28 and 40. As noted above, the "mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole." Thus mere identification of a progressive service, authentication and authorization is not sufficient to render the claims obvious, because neither Gatto nor Tarantino, alone or in combination, teaches or suggests an arrangement where a discovery agent authenticates and authorizes a progressive service for a gaming network.

Claims 2-12, 14-19, 21-27, 29-39 and 41-46 depend from claims 1, 13, 20, 28 and 40 respectively. These dependent claims inherit the elements of their respective base claims and are not obvious in view of the combination of Gatto and Tarantino for at least the reasons discussed above regarding their respective base claims 1, 13, 20, 28 and 40. Appellant respectfully requests reversal of the rejection of claims 2-12, 14-19, 21-27, 29-39 and 41-46.

For all of the above reasons, Appellant respectfully submits that pending claims 1-46 are not obvious in view of Gatto and Tarantino. Appellant respectfully requests reversal of the rejection of claims 1-46.

SUMMARY

For the reasons argued above, claims 1-46 were not properly rejected under 35 U.S.C. §103 as being unpatentable over Gatto and Tarantino.

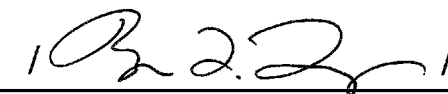
It is respectfully submitted that the art cited does not render the claims obvious and that the claims are patentable over the cited art. Reversal of the rejection and allowance of the pending claim are respectfully requested.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402

Date October 13, 2009

By

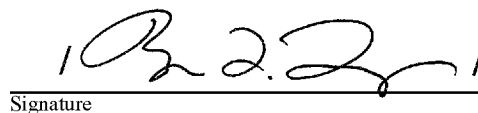


Rodney L. Lacy
Reg. No. 41,136

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 13th day of October 2009.

Rodney L. Lacy

Name



Signature

8. CLAIMS APPENDIX

1. A method for providing a progressive service to gaming machines in a gaming network, the method comprising:

sending service information for the progressive service from the progressive service to a discovery agent on the gaming network, wherein the progressive service provides information regarding a progressive wagering game to a plurality of gaming machines participating in the progressive wagering game, and wherein in response to a wager at one of the plurality of gaming machines the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game;

determining by the discovery agent if the progressive service is authentic and authorized;

in response to determining that the progressive service is authentic and authorized, publishing the service information to a service repository to make the progressive service available on the gaming network;

receiving by the discovery agent a request for the location of the progressive service from the gaming machine;

using the service information to register the gaming machine with the progressive service;

verifying that the gaming machine is authorized to utilize the progressive service; and

processing one or more service requests between the gaming machine and the progressive service, said service requests conforming to an internetworking protocol.

2. The method of claim 1, wherein the progressive service comprises a web service.

3. The method of claim 2, wherein the service request is formatted according to a service description language.

4. The method of claim 3, wherein the service description language is a Web Services Description Language (WSDL)

5. The method of claim 1, wherein the service request comprises a request for notification of a progressive configuration update by the gaming machine.

6. The method of claim 5, further comprising:
receiving a progressive configuration change; and
issuing a notification of the progressive configuration update to the gaming machine in response to the progressive configuration change.

7. The method of claim 1, wherein the service request comprises a request by the gaming machine to stop notification of an update to the progressive configuration.

8. The method of claim 1, wherein the service request comprises a request to download a progressive configuration to the gaming machine.

9. The method of claim 8, wherein the service request is initiated by the gaming machine.

10. The method of claim 8, wherein the service request is initiated by the progressive service.

11. The method of claim 1, wherein the service request comprises a notification of an update to a progressive amount.

12. The method of claim 1, wherein the service request comprises an updated progressive amount.

13. A method for participating in a progressive game on a gaming machine via a progressive service in a gaming network, the method comprising:
issuing a request from the gaming machine to a discovery agent to discover a service description for the progressive service, wherein the discovery agent receives the service description from the progressive service and authenticates and authorizes the progressive service,

and wherein in response to a wager the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game;

receiving the service description from the discovery agent;

using the service description to register with the progressive service, wherein the progressive service verifies that the gaming machine is authorized to utilize the progressive service; and

processing one or more service requests between the gaming machine and the progressive service.

14. The method of claim 13, wherein the progressive service comprises a web service.

15. The method of claim 14, wherein the service description comprises a web services description language.

16. The method of claim 13, wherein the service request comprises a request for notification of a progressive configuration update.

17. The method of claim 13, wherein the service request comprises a notification for a play event on the gaming machine.

18. The method of claim 13, wherein the service request comprises a notification of a jackpot won event.

19. The method of claim 13, wherein the service request comprises a request for notification of progressive amount updates.

20. A gaming network system providing a progressive service, the gaming network system comprising:

a progressive service communicably coupled to a gaming network, wherein the progressive service provides information regarding a progressive wagering game to a plurality of gaming machines participating in the progressive wagering game; and

a discovery agent communicably coupled to the gaming network, wherein the discovery agent is operable to:

receive service information from the progressive service,

determine if the progressive service is authentic and authorized, and

publish the service information to a service repository to make the progressive service available on the gaming network;

wherein at least one gaming machine of the plurality of gaming machines communicably coupled to the gaming network is operable to:

issue a request for the location of the progressive service to the discovery agent and use the service information received from the discovery agent to issue a registration request to the progressive service; and

wherein the progressive service is operable to:

receive registration requests from the at least one gaming machine,

verify that the gaming machine is authorized to utilize the progressive service,

and

process service requests between the gaming machine and the progressive service.

21. The gaming network system of claim 20, wherein the progressive service comprises a web service.

22. The gaming network system of claim 20, wherein the service request comprises a request by the gaming machine for a progressive configuration update.

23. The gaming network system of claim 20, wherein the progressive service is further operable to:

receive a progressive configuration change; and

issue a notification of the progressive configuration update to the gaming machine in response to the progressive configuration change.

24. The gaming network system of claim 20, wherein the service request comprises a request to download a progressive configuration to the gaming machine.

25. The gaming network system of claim 20, wherein the service request comprises a notification for a play event on the gaming machine.

26. The gaming network system of claim 20, wherein the service request comprises a notification of a jackpot won event.

27. The gaming network system of claim 20, wherein the service request comprises a request for notification of progressive amount updates.

28. A computer-readable medium having computer executable instructions for performing a method for providing a progressive service to gaming machines in a gaming network, the method comprising:

sending service information for the progressive service from the progressive service to a discovery agent on the gaming network, wherein the progressive service provides information regarding a progressive wagering game to a plurality of gaming machines participating in the progressive wagering game, and wherein in response to a wager at one of the plurality of gaming machines the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game;

determining by the discovery agent if the progressive service is authentic and authorized;

in response to determining that the progressive service is authentic and authorized, publishing the service information to a service repository to make the progressive service available on the gaming network;

receiving by the discovery agent a request for the location of the progressive service from the gaming machine;

using the service information to register the gaming machine with the progressive service; and

processing one or more service requests between the gaming machine and the progressive service.

29. The computer-readable medium of claim 28, wherein the progressive service comprises a web service.

30. The computer-readable medium of claim 29, wherein the service request is formatted according to a service description language.

31. The computer-readable medium of claim 30, wherein the service description language is a Web Services Description Language (WSDL)

32. The computer-readable medium of claim 28, wherein the service request comprises a request for notification of a progressive configuration update by the gaming machine.

33. The computer-readable medium of claim 32, wherein the method further comprises:
receiving a progressive configuration change; and
issuing a notification of the progressive configuration update to the gaming machine in response to the progressive configuration change.

34. (Original) The computer-readable medium of claim 28, wherein the service request comprises a request by the gaming machine to stop notification of an update to the progressive configuration.

35. The computer-readable medium of claim 28, wherein the service request comprises a request to download a progressive configuration to the gaming machine.

36. The computer-readable medium of claim 35, wherein the service request is initiated by the gaming machine.

37. The computer-readable medium of claim 35, wherein the service request is initiated by the progressive service.

38. The computer-readable medium of claim 28, wherein the service request comprises a notification of an update to a progressive amount.

39. The computer-readable medium of claim 28, wherein the service request comprises an updated progressive amount.

40. A computer-readable medium having computer executable instructions for performing a method for participating in a progressive game on a gaming machine via a progressive service in a gaming network, the method comprising:

issuing a request from the gaming machine to a discovery agent to discover a service description for the progressive service, wherein the discovery agent receives the service description from the progressive service and authenticates and authorizes the progressive service, and wherein in response to a wager the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game;

receiving the service description from the discovery agent;

using the service description to register with the progressive service, wherein the progressive service verifies that the gaming machine is authorized to utilize the progressive service; and

processing one or more service requests between the gaming machine and the progressive service.

41. The computer-readable medium of claim 40, wherein the progressive service comprises a web service.
42. The computer-readable medium of claim 40, wherein the service description comprises a web services description language.
43. The computer-readable medium of claim 40, wherein the service request comprises a request for notification of a progressive configuration update.
44. The computer-readable medium of claim 40, wherein the service request comprises a notification for a play event on the gaming machine.
45. The computer-readable medium of claim 40, wherein the service request comprises a notification of a jackpot won event.
46. The computer-readable medium of claim 40, wherein the service request comprises a request for notification of progressive amount updates.

9. EVIDENCE APPENDIX

None.

10. RELATED PROCEEDINGS APPENDIX

None.